



Commonwealth of Massachusetts State Ethics Commission

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CONFLICT OF INTEREST OPINION EC-COI-92-26*

FACTS:

The Martha's Vineyard Collaborative (Collaborative) was formed under a letter of agreement between the school committees of the six Vineyard schools and the Regional High School, pursuant to G.L. c. 40, §4E and c. 7, §22B. The Collaborative is organized as a 501(C)(3) corporation devoted exclusively to educational purposes. The purpose of the Collaborative is to conduct joint educational programs, including, but not limited to, providing services to special needs children, cooperative purchasing of goods and materials, and coordinating and implementing in-service education. The Collaborative is run by a Board comprised of one person from each Town's school committee or the Committee's designee and an ex-officio designee of the state Department of Education. One of the Board's principal duties is to establish and manage the Collaborative Trust Fund which receives all funds and reimbursements from the municipalities, as well as grants or gifts from any source. The municipalities cover administrative costs of the Collaborative on a pro-rata basis and cover program costs on a per pupil cost basis.

The Chilmark School Committee wants to appoint an elected member of the Chilmark Finance Committee to serve as the Chilmark representative to the Collaborative.

QUESTION:

Does G. L. c. 268A permit an elected member of the Chilmark Finance Committee to serve as the School Committee's designee on the Collaborative?

ANSWER:

Yes.

DISCUSSION:

1. Jurisdiction

Members of the Chilmark Finance Committee are municipal employees^{1/} for purposes of the conflict law. An initial question arises whether a member of the Finance Committee is also a public employee as a Collaborative board member. We conclude that, within the meaning of G.L. c. 268A, the Collaborative is an instrumentality of each municipality which comprises the Collaborative, similar to regional school committees, and that the Chilmark representative is a municipal employee in that capacity.

In a determination whether an organization is a public entity under G.L. c. 268A the Commission has not considered the corporate structure of an entity to be dispositive of the issue. The Commission has weighed whether the entity is created by governmental means; whether the entity serves an inherently governmental purpose; whether the entity is controlled or supervised by government employees; and whether the entity is funded by the government or expends government funds. *See EC-COI-91-12; 89-1; 88-24; 88-19.*

For example, the Commission has found private non-profit entities to be public entities where the entity was created by a public agency to assist the agency in furthering its legislative mandate. *See EC-COI-91-12; 89-1; 88-24.* Similarly, the Commission found that a regional school district was an independent municipal agency for purposes of the conflict of interest law as the district was an entity supported by public funds, and its purpose was to provide a service which each municipality in the Commonwealth is required by law to provide. *EC-COI-82-25.*

Recently, the Appeals Court affirmed a Commission Decision and Order finding that members of a regional school committee are municipal employees under G.L. c. 268A. In doing so the Court concluded that a regional school district is an instrumentality of each municipal member under G.L. c. 268A, §1(f). *McMann v. State Ethics Commission*, 32 Mass. App. Ct. 421, 428 (1992). In reaching this conclusion the Court considered the ordinary and approved use of the word “instrumentality” in the statute; the formation, operation and purpose of a regional school district; and the purpose of G.L. c. 268A. *Id.* at 425-428. The Court found that the municipalities use the school district as a means to fulfill their statutory obligation to provide education and that the municipalities played a substantial role in the creation of the district and the district’s financial matters. *Id.* at 427.

We now expressly follow the Appeals Court’s reasoning in considering whether a regional entity, such as the Collaborative, is a municipal agency within the meaning of G.L. c. 268A, §1(f). The Commission will no longer consider regional municipal entities to be “independent” municipal entities.^{2/} See *EC-COI-92-15*. Rather we will consider whether such entities are instrumentalities of each municipal member based on the ordinary and approved usage of the statutory language, the purpose of G.L. c. 268A and the form, operation and purpose of the regional entity.

Applying this analysis to the case before us, we conclude that the Collaborative is a municipal agency within G.L. c. 268A, §1(f). In light of the purpose of G.L. c. 268A to assure integrity and honesty in government by eliminating actual and potential conflicts between a public official’s duties and private interests, it is reasonable to conclude that c. 268A applies to the Collaborative, an entity with public attributes. The impetus for the creation of the Collaborative is in G.L. c. 40, §4E which permits municipal school committees to enter letters of agreement to form educational collaboratives. The purpose of the Collaborative is to assist school committees in their traditionally governmental function of providing public education. G.L. c. 40, §4E. The Collaborative receives substantial funding support from the member municipalities, and the funding is administered by a Board of municipal appointees from the member school committees. It is noted that any amendment to the agreement, such as the addition of a new member, must be approved by the other member municipalities. Finally, G.L. c. 40, §4E expressly contemplates that the Collaborative will be a public entity and that the Board will be a public employer. G.L. c. 40, §4E. In conclusion, the Collaborative is created by the municipalities as a means by which municipalities fulfill their educational responsibilities and is an instrumentality of those municipalities.

2. Application of the Conflict of Interest Law

A local municipal employee who is also serving as a Collaborative Board member will be considered to be serving on two municipal boards. This dual status eliminates certain conflict of interest issues which would otherwise arise in dealings between the employee’s individual town and the Collaborative. Under G. L. c. 268A, §17(c) a municipal employee may not act as agent for anyone, other than the municipality, in connection with a matter in which the municipality is a party or has a direct and substantial interest. Section 19, in relevant part, prohibits a municipal employee from participating in a matter in which a business organization^{3/} in which he is serving as an officer, director, trustee, partner or employee has a financial interest.^{4/} These sections of the conflict law will not prohibit a municipal employee from acting, as a Board member, in matters in which the individual municipality has an interest, or, as a local municipal employee, in matters in which the Collaborative has an interest, because in each capacity the employee is acting on behalf of the municipality. See *EC-COI-90-2; 88-24*.^{5/}

Date Authorized: September 10, 1992

*Pursuant to G.L. c. 268B, §3(g), the requesting person has consented to the publication of this opinion with identifying information.

^{1/}“Municipal employee,” a person performing services for or holding an office, position, employment or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis, but excluding (1) elected members of a town meeting and (2) members of a charter commission established under Article LXXXIX of the Amendments to the Constitution. G.L. c. 268A, §1(g).

^{2/}See *McMann*, *supra*, at 428, n. 5 (questioning the statutory basis for municipal entities as “independent” municipal entities). Also, note that the definition of “state agency” includes “any **independent** state authority, district, commission, instrumentality or agency...”

(emphasis added), whereas the definition of municipal agency does not include the word “independent.” G.L. c. 268A, §1(f) and (p).

³Non-profit entities and municipalities are considered to be “business organizations” for purposes of §19. *See EC-COI-89-2; 88-4; 84-7; 81-62.*

⁴We note that G.L. c. 268A, §20 may apply to the employee in his dual positions. We understand that the Finance Committee member will not be compensated in either position, and therefore §20 will not apply to his situation. However, §20 issues may arise in the future. For example, an appointed municipal employee may not serve as a Collaborative Board member and receive compensation in either position, unless an exemption applies. This section may be particularly relevant in the situation of a local school teacher who also wants to work part-time for the Collaborative. However, §20 will not prohibit a paid school committee member from also serving as a Collaborative Board member because G.L. c. 40, §4E expressly contemplates that school committee members, by virtue of their positions, are required to serve as municipal representatives on the Board. *See EC-COI-84-148* (one contract forms basis for state committee membership and agency employment). If issues arise under §20, you should seek further guidance from the Commission.

⁵Sections 17 and 19 will apply to the municipal employee in his other private activities. For example, the Board member may not participate, under §19, in decisions to adopt or cancel a program in which his child is participating. Under §17, the employee may not represent private parties in their dealings with the Collaborative or the Town.